

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHNNY McFARLAND,

Plaintiff,

v.

GUARDSMARK, LLC,

Defendant.

No. C 07-3953 PJH

ORDER

The court is in receipt of the parties' joint stipulation regarding the dismissal of the claims in the above-entitled action. Under Federal Rule of Civil Procedure 23(e), "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). Although Rule 23(e) in its present form refers only to a "certified class," the Ninth Circuit previously held in Diaz v. Trust Territory of the Pac. Islands, 876 F.2d 1401 (9th Cir. 1989) that the rule applies to pre-certification dismissals and compromises. Id. at 1406-07.

This court assumes, without deciding, that Rule 23 applies in this instance. Thus, the parties should submit a stipulation that briefly addresses the factors identified in Diaz, and explains why those factors do not weigh in favor of requiring notice to the putative class members in this case. See, e.g., Ramirez v. Cintas Corp., 2007 WL 4410414 (N.D. Cal., Dec. 14, 2007). The stipulation shall be filed no later than August 6, 2008.

IT IS SO ORDERED.

Dated: July 23, 2008



PHYLLIS J. HAMILTON
United States District Judge